

FINAL STATEMENT OF REASONS:

The California Department of Corrections and Rehabilitation (Department) proposes to amend Sections 3050, 3051, 3052, 3053, and 3054 and to adopt Sections 3054.1, 3054.2, 3054.3, 3054.4, 3054.5, and 3054.6 of the California Code of Regulations (CCR), Title 15, concerning Food Services (FS).

These regulations were amended to comply with current Health and Safety Code Sections 113975 through 114180, the California Uniform Retail Food Facilities Law (CURFFL), and to accommodate a United States District Court settlement in the case of *Cooper v. the State of California, et al.* The regulation changes also come about for compliance with the Religious Land Use and Institutionalized Persons Act (RLUIPA) mandating the rights of inmates to practice their religious beliefs. Aspects of policy language developed regarding FS were determined to be regulatory and require promulgation of that language in accordance with the decision of California Court of Appeals, 5th Appellate District, *Tooma v. Rowland, etc.*, which require compliance with the Administrative Procedure Act (APA).

The Department also proposes these changes regarding FS for the purpose of consistency and clarity by relocating and renumbering language to ensure clear understanding of the requirements as set forth above. The Department has also changed references to Health and Safety Code as those statutes governing the mandates on the Department changed in statute and are now adopted as stated above.

Additionally, the Department amends and adopts language to accommodate various religious diets and special religious events. Specifically, in keeping with the *Cooper* case, the Department offers a Kosher Diet to qualifying Jewish inmates. The Department also adopts language for Vegetarian Diets for religious diet participants who do not consume meat (animal flesh), as well as, the pork-free heart healthy diet to accommodate nonreligious and religious participants eating animal flesh. The Department further explains the process for requesting, qualifying, violating, etc., entry into its religious diet programs and the responsibilities of Institution Chaplains whose roles are to oversee and manage the religious diet programs and special religious events.

This action amends language that is in compliance with CURFFL regarding Health and Safety of food handling, and the training necessary to accomplish those goals, in addition to the language that defines non-inmate (e.g., visitor) meals and the associated relevant costs when it is applicable.

These regulations also include additional changes that have been made to the originally proposed text. After the end of the minimum 45-day comment period, it was determined that additional amendments to the text needed to be made in order to correctly reference the five new CDCR Forms that are included in these regulations. A 15-Day Renotice, which included the amended text and a copy of each form, were forwarded to all individuals who within the original comment period, either provided comment to the originally proposed text or requested a copy of any additional changes. This amended text included additional language that provides the form number, form revision date, and title of each referenced form. Other amendments also include formatting changes to the original document, which were necessary for correction purposes and non-substantive changes to some of the Authority and Reference citations, also for correction purposes.

The Department has determined that no reasonable alternatives to the regulations have been identified or brought to the attention of the Department that would lessen any adverse impact on small business.

The Department has determined that the facts, evidence, and documents initially identified in the Initial Statement of Reasons support an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the Department's initial determination.

The Department did not make an initial determination in the Initial Statement of Reasons as to whether adoption, amendment, or repeal of the regulation imposes a mandate on local agencies or school districts. However, the Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate, which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4.

3050. Regular Meals.

Subsections 3050(a) and (a)(1) are unchanged.

Subsection 3050(a)(2) is amended to accommodate inmate religious observances, religious meal programs, and institution emergencies by allowing variations to the two hot meals per day requirement.

Subsection 3050(b) is unchanged.

New subsection 3051(a) adopts new language to clarify that, although pork or pork derivatives are no longer served in institutions, pork may be found in meals within camp settings outside Institutions (e.g., fire camps).

Existing subsection 3051(a) is renumbered to (b) and amended to further clarify that pork-free protein alternatives shall be offered to those inmates who do not eat pork because of religious reasons. An additional change was also made to the originally proposed text and was included in the 15-Day Renotice. The asterisk symbol (*) was double underlined to indicate new text. This was necessary for correction because, due to an oversight, this symbol was not underlined as new text in the originally proposed text.

Existing subsections 3051(b) and (c) are repealed.

Authority and reference citation was inadvertently left out of the originally proposed text, but was placed back into the 15-Day Renotice text and amended to include as a reference, Penal Code Section 2084, which provides that the Department shall provide each prisoner with sufficient plain and wholesome food of such variety as may be most conducive to good health.

Section 3052 is amended to update statutory authorities regarding sanitation standards as mandated in the Health and Safety Code, California Uniform Retail Food Facilities Law (CURFFL).

The title to section 3053 is amended to read Food for Religious Events.

Section 3053 initial sentence is renumbered to 3053(a), and the existing sentences are renumbered to 3053(b) and are amended to expand regulatory language regarding religious events as it pertains to religious diets, identifying and setting the role for Chaplains oversight and criteria for requesting events. Additional changes to both subsections were also made to the originally proposed text, and were included in the 15-Day Renotice.

In 3053(a), the current words “may” and “no” were inadvertently left out of the originally proposed text. To correct this, the words were placed back into the text and then deleted. In subsection 3053(b), the current words “should” and “proposed menu and number of persons to be served” were inadvertently left out of the original text. To correct this, they were placed back into the text and also deleted. Finally, the word “following” was not underlined in the original text as new. For correction, it was double underlined as new.

Section 3054 title is amended to read Religious Diet Program. This is necessary to reflect the new religious diet programs.

Existing subsection 3054(a)(1) is amended, renumbered, and relocated to new subsection 3054.3(a).

Existing subsection 3054(a)(1)(A) is amended, renumbered, and relocated to new subsection 3054.3(b)(1).

Existing subsection 3054(a)(1)(B) is amended, renumbered, and relocated to new subsection 3054.3(b)(6).

Existing subsection 3054(a)(2) is repealed.

Existing subsection 3054(b) is repealed. In addition, the reference to this deleted subsection was inadvertently placed on the last page of the original text. To correct this, this reference was moved to the correct location under section 3054, and included in the 15-Day Renotice.

Existing subsection 3054(c) is amended, renumbered and relocated to new section 3054.1.

New subsections 3054(b) through (e)(2) are adopted and include new language pertaining to religious awareness training, transfers for religious diet purposes, medical diet necessities, and the religious diet options.

Authority citation is amended to remove an outdated reference to Stats. 1993, ch. 195, Sec. 1, which was a decree from 1993 that required the Department to submit a single report to the Legislature by 1994. This change was included in the 15-Day Renotice.

New Section 3054.1 is adopted to expand regulations to include a new vegetarian religious diet.

New section 3054.1 is relocated from existing subsection 3054(c), renumbered, and amended to add new regulatory language regarding vegetarian religious diets that explains the criteria, introduces a new CDCR form for religious diet cards (incorporated by reference), and explains provisions for vegetarian protein alternatives. An additional change was also made to the originally proposed text and included in the 15-Day Renotice. To correctly reference the new form, the CDCR acronym was added to the form number, date and title to now read, CDCR Form 3030-B (09/05), Religious Diet Card, which is incorporated by reference.

Authority and reference citation is added back into the text and amended to remove an outdated reference to Stats. 1993, ch. 195, Sec. 1, which was a decree from 1993 that required the Department to submit a single report to the Legislature by 1994. Due to an oversight, this citation was omitted from the original text that was noticed to the public.

New section 3054.2 is adopted to add new regulatory language regarding Jewish Kosher diets. The new regulations explain the criteria, participation requirements, and the Jewish Chaplains oversight role. An additional change was also made to the originally proposed text in subsection 3054.2(a), and was included in the 15-Day Renotice. The reference “for Jewish inmates” was deleted. This change was necessary in order to remove confusing language that lead the reader to believe that there were institutions only for Jewish inmates.

Authority citation is amended as an additional change to the original text in order to remove an outdated reference to Stats. 1993, ch. 195, Sec. 1, which was a decree from 1993 that required the Department to submit a single report to the Legislature by 1994.

New section 3054.3 is adopted to add a new title regarding participation in religious diet programs.

New subsection 3054.3(a) is relocated from the initial sentence of existing subsection 3054(a)(1) and is renumbered and amended to further explain the procedure to participate in a religious diet program. Additional changes were also made to the originally proposed text and included in the 15-Day Renotice. To correctly reference the form, the CDCR acronym, form number, and date were added to the title to now read, CDCR Form 3030 (09/05), Religious Diet Request, which is incorporated by reference. Two other changes for clarity include the deletion of the word “form”.

New subsection 3054.3(b) is relocated from the secondary sentence of existing subsection 3054(a)(1), and 3054.3(b)(1) is relocated from existing subsection 3054(a)(1)(A) and are renumbered and amended to further explain the Chaplains role in providing religious diets to inmates.

New subsections 3054.3(b)(2), (3), (4), and (5) are adopted to further explain the Chaplains role in providing religious diets to inmates and introduces new CDCR forms for religious diet program agreements, religious diet program cancellation requests, and the forms process. Additional amendments were also made to the originally proposed text. This was necessary in order to correctly reference the forms in the text and incorporate them into the text by reference. The changes in subsections 3054.3(b)(3), (b)(4), and (b)(5) were made by adding the CDCR acronym and appropriate form numbers, form dates, and titles. Additional changes also include the deletion of the word “form” and “department’s”, along with the addition of some clarifying language. All amendments were included in the 15-Day Renotice.

New subsection 3054.3(b)(6) is relocated from existing subsection 3054(a)(1)(B) and is renumbered and amended to further explain the religious diet program process and timelines.

New subsections 3054.3(b)(7), (8), (9), and (10) are adopted to further explain the process of the religious diet program and the roles and responsibilities of the Chaplin regarding monitoring, coordinating, religious diet card, and compliance violations. An additional change to the originally proposed subsection 3054.3(b)(8) was also made and was included in the 15-day renotice. To correctly reference the Religious Diet Card, the text CDCR Form 3030-B was added.

New authority and reference citation is amended. Due to an oversight, this citation was not underlined as new in the original text that was noticed to the public. To correct this, this citation has been double underlined as new in the 15-Day Renotice and amended to remove

an outdated reference to Stats. 1993, ch. 195, Sec. 1, which was a decree from 1993 that required the Department to submit a single report to the Legislature by 1994.

New section 3054.4 is adopted to provide the process for monitoring religious diet program compliance violations and the role of the Chaplain in this process. In addition, changes were made to the originally proposed text and were included in the 15-Day Renotice. These changes include for correction, the acronym CDCR changed to CDC in reference to CDC Form 128B and the upper case letter “S” in the word “section” changed to lower case “s”. Additionally, the new form concerning compliance monitoring, the CDCR Form 3030-C (09/05), Religious Diet Program Agreement-Notice of Non-Compliance was incorporated by reference into this section. Additional text was also added for clarification.

New authority and reference citation had additional amendments to the originally proposed text in order to remove an outdated reference to Stats. 1993, ch. 195, Sec. 1, which was a decree from 1993 that required the Department to submit a single report to the Legislature by 1994. Also, reference to a Penal Code section 383b was deleted because it should not have been included in the original text. All additional changes were included in the 15-Day Renotice.

New section 3054.5 is adopted to add regulatory language when accommodating non-inmates that are served meals and the cost per meal to be charged.

New authority and reference citation had additional amendments to the originally proposed text in order to remove an outdated reference to Stats. 1993, ch. 195, Sec. 1, which was a decree from 1993 that required the Department to submit a single report to the Legislature by 1994. References to Penal Code sections 383b and 5009 should not have been included in the original text and were deleted. These changes were included in the 15-Day Renotice.

New section 3054.6 is adopted to add regulatory language concerning reimbursement for state purchased food when accommodating outside guests who attend inmate banquets, luncheons, or other special events, and the associated cost per meal that is to be charged.

New authority and reference citation was added to the originally proposed text. Included in the 15-day renotice, this change was necessary due to an inadvertent omission to the original text.

In the originally proposed text, references to the repeal of subsections 3054(a)(2) and 3054(b) were inadvertently placed by mistake in this location along with a deleted authority and reference citation. These were placed in the correct locations and included in the 15-day renotice.

Section 3055 is unchanged.

Section 3056 is unchanged.

ASSESSMENTS, MANDATES, AND FISCAL IMPACT:

This action creates new jobs by adding 12 new half time Chaplain positions statewide within the California Department of Corrections and Rehabilitation institutions. This action does not result in the elimination of existing businesses, or create or expand businesses in the State of California.

The Department determines this action imposes no mandates on local agencies or school districts; no fiscal effect on Federal funding to the State or private persons. Total benefits for the Department are unknown, but could offset future litigation costs against the Department and the State regarding the rights of inmates to practice their religious beliefs as mandated by federal mandates found in the RLUIPA. It is also determined that this action does not affect small businesses nor have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states, because they are not affected by the internal management of State prisons; or on housing costs; and no costs or reimbursements to any local agency or school district within the meaning of Government Code Section 17561.

DETERMINATION:

The Department has determined that no alternative considered would be more effective in carrying out the purpose of this action or be as effective and less burdensome to affected persons; however, the Department is researching alternatives to other impacted religious needs to be addressed in the future.

PUBLIC COMMENTS TO ORIGINAL PROPOSED REGULATIONS:

Public Hearing: Held November 21, 2005, at 9:00 a.m.

SUMMARIES AND RESPONSES TO ORAL COMMENTS AT THE PUBLIC HEARING:

Speaker #1.

Comment 1A: Commenter states the regulations fail to address the problem of other minority religious inmates in prisons. There are other inmates seeking religious observant meals, but there are no provisions for them except Vegetarian meals. Kosher meals are a reasonable alternative and should be offered to those inmates with religious needs.

Accommodation: None.

Response to Comment 1A: The Department has provided Chaplains the responsibility to determine whether inmates qualify to participate in a religious diet program. Meal programs offered at this time include Kosher, Vegetarian, or pork-free heart healthy meals. These are versatile options that accommodate the religious needs for a large population of inmates.

Comment 1B: Commenter states there is a significant problem in the retaining of Rabbis in order to oversee the programs at the institutions. Commenter states there is a significant delay in retention of Rabbis and there have been no Rabbis yet appointed. Commenter further states the program cannot be started until Rabbis approve kitchens and the procedures of kitchens. Commenter states half time Rabbis proposed for this regulatory program cannot fulfill the most important part of Kosher, which is to make sure inmate observants get the benefits of the religious opportunity and that the half time Rabbi would only have time to oversee the kitchens. Commenter finally states the solution would be to combine kitchens that are otherwise spread out all over an institution and consolidate Jewish inmates to that area.

Accommodation: None.

Response to Comment 1B: Although the Department has an approved budget to hire 12 half time Chaplains statewide, the start of the program is pending the regulatory process as mandated by the Administrative Procedure Act. Once the program begins, hiring of Chaplains is not anticipated to be a lengthy process. The Department has already begun

training programs for Chaplains to address the upcoming new programs for food service and other religious factors. The placement of kitchens and housing of inmates involves security issues that would have to be addressed on an institution by institution basis. However, some options may be available depending on the inmate's classification and necessary housing level of security. It may not be feasible to house all observant members of a faith in a single institution or a single housing area.

Comment 1C: Commenter states training problems encompass training staff on religions is not in regulations, and kitchen staff and inmates need training. Custody staff need to overcome predispositions and prejudices. The Department needs a sense of what Kosher means in order to implement program. Staff don't know, but many have genuine interest to learn what Kosher means. Regulations do not address this. Commenter states the regulations create a class of people creating resentment towards Jewish Inmates. There is no training in regulations to explain to all inmates why a group of people are receiving a special meal, not because it is special or better than theirs, but because there is a Jewish law. Inmates think Jews are being treated better. Inmates need to know Jews are not being treated better, but the same. Creates Jewish "selection" when selection is suggested for Jews it has a connotation that far exceeds purposes and goals of the Department. Yet, the regulations suggest a selection for Jews above other people. This creates a significant problem because it should not be. Example is the American Disabilities Act. It should be clear that Jews are getting something that meets their daily needs just like a man in a wheelchair, etc. No provision or planning is established for this.

Accommodation: None.

Response to Comment 1C: The Department's regulations for Food Service adds new language to subsection 3054(b), which states: "Each institution shall provide ongoing religious awareness training for custody, food service staff, and anyone involved in the religious meals programs as deemed appropriate." Although this requirement heightens sensitivity, knowledge and understanding should guide custody and food service staff to not highlight religious diets. This provision should assist Comment A where relevant to Comment B.

Comment 1D: Commenter states that the lowest vendor bidders contracted with to supply institution Canteens not supply, nor carry Kosher and/or parve foods. Commenter notes that inmates are obese. The Department needs to include a Kosher vendor to contract with to supply healthy and Kosher Canteen foods.

Accommodation: None.

Response to Comment 1D: The regulations addressed here do not pertain to Canteens which are pursuant to Penal Code Section 5005 and found in Title 15, subchapter 2, Inmate Resources, Article 1, Canteens. Currently, institution staff consult with representatives of the inmate population when determining what items to be stocked in Canteens.

Comment 1E: Commenter states that these regulations expand a benefit for a small class of inmates to become involved with to make themselves better. Commenter states to postpone this benefit until the final regulations are adopted is an error because we're talking about serving food. Commenter states once this hearing is over, this program should be implemented immediately. Commenter finally states the benefit is needed immediately and that is the way these regulations should be examined and determined.

Accommodation: None.

Response to Comment 1E: The Department recognizes the significant need to implement the Food Services programs in respect to the court order, current statutes, laws, constitution, and religious freedom. However, the Department is bound by the APA. The Department is taking every step to see the process through quickly and will request from the Office of Administrative Law an early effective date upon filing of this final rulemaking package.

Speaker # 2.

Comment 2A: Commenter states that the Vegetarian diet smacks of the worst policy decision just being used to offset costs. Commenter further states the Department knows Muslims will litigate. Commenter also states the Department is just doing this as a quick fix. Commenter further states the regulations force a Vegetarian diet on observant inmates. Commenter further states the inmates are forced to litigate. Commenter further states there are 30 – 40 class action suits to challenge these regulations already. Commenter also states the short term fix to a long term problem will cost the Department money. Commenter finally states the Department settled with a small minority who are mostly white.

Accommodation: None.

Response to Comment 2A: The Department is responding to a court order, current federal and state mandates, and the RLUIPA in expanding religious events and ceremonial foods, as well as, diets. The Department strives to provide well balanced meals that meet religious needs within the budgetary constraints established by the Legislature.

Commenter submitted further comments in writing under summaries and responses to written comments, Commenter # 5.

Speaker # 3.

Comment 3A: Commenter states that the Department is doing the right thing, has good ideas, but needs to expand. Commenter states two major religions were left out and that the regulations need to be pluralistic. Commenter states a limited application of the *Cooper* decision is the basis for the regulations. Commenter states RLUIPA mandates implementation of religious programming must be accommodated at the least restrictive means. Commenter recommends minimal language and expense adjustment and a two day comprehensive religious dietary training requirement provided to all state chaplains.

Accommodation: None.

Response to Comment 3A: The Department has complied with the *Cooper* decision to provide Jewish inmates with Kosher meals during religious events, but has expanded to provide the meal year round. The Department further expanded the Vegetarian meals and included a pork-free heart healthy meal, both of which are versatile and can be adapted to fit other inmate religious and diet needs. The Department further incorporated timelines to ensure quick processing of religious requests and needs. Finally, the Department has a new policy adding training programs for custody, Chaplains, and food handlers to be educated on a myriad of food issues including, but not limited to, religious sensitivity, sanitation, and safety.

Speaker #4.

Comment 4A: Commenter states he is the representative of the Islamic Shariah Council of California and he presents for them the Islamic view of Vegetarianism. Commenter provides background for the Halal diet (emphasis on lawful permission to eat meat). Commenter states Muslim inmates are given the right to eat meat as certified by their religion and also their constitutional right. Commenter further states Muslim inmates should have the right to seek outside council from other scholars (re *Cutler v. Wilkinson*).

Accommodation: None.

Response to Comment 4A: The Department provides a pork-free heart healthy diet that, although it is not “Halal,” offers meat that accommodates the religious and dietary needs of many inmates. The Department is still seeking Halal meat vendors that can provide statewide Halal meats at a cost the Department can afford. The Department’s current findings indicate an additional annual cost of over \$9 million that is not funded in the Department’s current budget to provide Halal meats. The Department will continue to look into Halal meats and other religious diets, working with stakeholders for future food service changes, and with the Department of Finance and the Legislature on any additional funding that may be needed.

Speaker #5.

Comment 5A: Commenter states he is the President of the Association of California Chaplains in State Service (ACCSS), which is a professional group for the Chaplains in the State of California. Commenter states the regulations are singular in that they address one individual or group via litigation. To prevent further litigation, the Department should look at all religious groups.

Accommodation: None.

Response to Comment 5A: Again, the Department is researching food sources and costs as religious diet needs are identified to determine feasibility of future changes to food service.

Speaker #6.

Comment 6A: Commenter states he is the President of the Muslim American Chaplains Association. Commenter states the Department needs a policy regarding the dietary accommodations of the inmate Muslim population. Commenter states the Department should not base its inmate dietary program on budget or litigation. Commenter states the inmate Muslim diet is the same as the free Muslim population.

Accommodation: None.

Response to Comment 6A: The Department is researching food sources and costs as religious diet needs are identified to determine feasibility of future changes to its food service. However, the Department must respond to litigation and live within its budgetary means as established by the Legislature.

Speaker #7.

Comment 7A: Commenter states he is a Jewish Chaplain at Folsom and Mule Creek State Prisons and has served on the Task Force to develop these regulations. Commenter states he hopes inmates will return to their religious tradition and rebirth to promote rehabilitation.

Accommodation: None.

Response to Comment 7A: The Department also recognizes the role religious programs have in promoting rehabilitation and potentially reducing recidivism. The Department remains open to future changes to promote religious participation for practicing inmates.

Speaker #8.

Comment 8A: Commenter states he is a member of the Muslim community in California. Commenter states he thinks it is important to support the other minority groups and their religious practices because it is just and the inmates can become better people.

Accommodation: None.

Response to Comment 8A: The Department agrees that religious programs are important for inmates. Again, the Department is researching food sources and costs as religious diet needs are identified to determine the feasibility of future changes to food service.

SUMMARIES AND RESPONSES TO WRITTEN COMMENTS:

Commenter #1.

Comment 1A: Commenter states proposed changes to regulations are long overdue. Commenter has current active litigation with California Supreme Court (Case #S135050) and United States District Court for the Eastern District, 42 U.S.C. Section 1983. Civil rights Complaint (Case #05-CV-573 FCD DAD). Commenter states he has applied for a religious diet card on several occasions and never received one. Commenter wants to see Department accountability for inconsistencies and lack of support for his participation in the religious diet programs. Commenter states he has a constitutional right to his request.

Accommodation: None.

Response to Comment 1A: The Department has incorporated training aspects of the Food Service regulations and policy which provide timelines to ensure timely response to religious and nonreligious diet requests and accommodations. The regulations and policy also provide training to heighten sensitivity, timeliness, etc., in order to ensure religious and nonreligious dietary needs are being met. The language also has built-in reporting requirements for Chaplains and custody staff to track and ensure accountability. The Department has no comment regarding the Commenter's current open litigation.

Commenter #2.

Comment 2A: Commenter makes no opposition statement. Commenter states he has applied for a religious Vegetarian diet card on several occasions and never received one. Commenter states he is Buddhist and follows a Vegetarian diet. Commenter states Muslim inmates applying for religious diet cards receive them quickly. Commenter states he will file

a complaint under 42 U.S.C. Section 1983 against the Muslim Imam on the grounds of prejudice.

Accommodation: None.

Response to Comment 2A: The Department has incorporated language in the regulations and policy to accommodate quick timelines and accountability for reviewing requests, along with administering and reporting of the religious diet programs. The Department has no comment regarding the Commenter's potential complaint against the local Muslim Imam.

Commenter #3.

Comment 3A: Commenter is opposed to the variations to the two hot meals per day requirement during institutional emergencies. Commenter states hot meals can still be prepared if mainline populations help cook, and that hot meals have previously been served during institutional emergencies. Commenter states the Department purchases food trays to serve hot meals on. Commenter states changes in meal plans, such as during institutional emergencies, are unforeseen to dietary meal plan and therefore costly.

Accommodation: None.

Response to Comment 3A: The Department requires restricted access to prison areas, such as kitchens, during emergency lockdowns for safety reasons. A sack meal is provided during institutional emergencies.

Commenter #4.

Comment 4A: Commenter is opposed to the regulation changes because they do not address the current non-pork product policy. Commenter states private pork industries are impacted. Commenter states omission of pork product source businesses gives preference to other animal meat source businesses. Commenter recommends re-introducing pork products to the Department's dietary menu plans.

Accommodation: None.

Response to Comment 4A: The Department's decision to eliminate pork is in line with the heart healthy goals to reduce fat and sodium. Eliminating pork also accommodates the religious needs for a large population of inmates. In addition, the Department provides chicken, eggs, beef, and milk to institutions statewide from several prisons with animal husbandry programs that house livestock. Pigs are not raised by the Department and serving pork would not directly support the Department's goals of increasing inmate employability through existing programming with the intent of decreasing recidivism. Pork may be provided in camp settings where departmental source meats are sometimes difficult to come by.

Commenter #5.

Comment 5A: Commenter is a law firm representing Kamal Sefeldeen (*Sefeldeen v. Alameda*, 9th Circuit Court of Appeal). Commenter states the case is to defend a Muslim inmate from having meals substituted with Vegetarian meals to accommodate non-Jewish religions. Commenter states Vegetarianism is a personal choice. Commenter states the

policy (regulations?) are discriminatory. Commenter states the regulations remove provisions that allow religious organizations to contract with CDCR for religion specific food products. Commenter opposes implementation of the propose regulations. Commenter includes a Muslim Fatwa (legal ruling) regarding Muslim dietary foods. Commenter explains the authority of the Fatwa and further asks what is the scope of the Islamic dietary requirements? Does Halal Diet apply only to meat? What type of necessity allows unlawful food? Is Vegetarianism for Muslims? And are Muslims permitted to eat Kosher? Commenter states the regulations remove provisions that allow religious organizations to contract with CDCR for religion specific food products. Commenter is perplexed by a Chaplain's declaration that Muslim inmates can become Vegetarian without violating the tenet of their belief which is contrary to regulations which state the Chaplain's shall verify an inmate's special religious dietary needs by contacting the religious organization to which the inmate claims to be an observant member.

Accommodation: None.

Response to Comment 5A is responded to under summaries and responses to oral comments, Speaker #4.

Commenter #6.

Comment 6A: Commenter opposes the repeal of Section 3054(a)(2). Commenter states the proposed repeal would not allow inmates access to special Kosher meats and fruits during holy religious Jewish holidays. Commenter recommends adoption of a cost per meal for a contracted religious diet at \$.85 plus tax to the Department.

Accommodation: None.

Response to Comment 6A: The Department has, and will continue to look into contracted foods, (religious and nonreligious) possibly in the form of quarterly food packages. The repeal of Section 3054(a)(2) was done to provide statewide consistency of religious meals provided and to accommodate vendor's contract bidding process.

Commenter #7.

Comment 7A: Commenter opposes changes to the regulations because they do not offer Muslims a choice of a Halal diet.

Accommodation: None.

Response to Comment 7A is responded to under summaries and responses to oral comments, Speaker #4.

Commenter #8.

Comment 8A: Commenter opposes changes to the regulations because they do not offer Muslims a choice of Halal diet.

Accommodation: None.

Response to Comment 8A is responded to under summaries and responses to oral comments, Speaker #4.

Commenter #9.

Comment 9A: Commenter opposes changes to the regulations because they do not offer Muslims a choice of Halal diet. Muslims deserve the chance for a Halal diet just like the Jewish get with Kosher meat.

Accommodation: None.

Response to Comment 9A is responded to under summaries and responses to oral comments, Speaker #4.

Commenter #10.

Comment 10A: See verbal comments for Speaker #3.

Accommodation: None.

Comment #11.

Commenter 11A: Commenter opposes changes to the regulations because they do not offer Muslims a choice of Halal diet.

Accommodation: None.

Response to Comment 11A is responded to under summaries and responses to oral comments, Speaker #4.

Commenter #12.

Comment 12A: Commenter opposes changes to the regulations because they do not offer Muslims a choice of Halal diet.

Accommodation: None.

Response to Comment 12A is responded to under summaries and responses to oral comments, Speaker #4.

Commenter #13.

Comment 13A: Commenter submits the following resources as input for the regulatory changes:

- Copy of Petition for Writ of Habeas Corpus in re Thomas Northrop.
- Copy of State of California contract for Fresh and Processed Meats.
- Copy of web site found at www.otherwhitemeat.com.
- Copy of Prison Industry Authority pork product listing.
- Copy of California Department of Corrections, Office of Community Resources periodical entitled Community Connections (2001).
- Copy of Thomas Northrop's second level Review regarding living conditions.

- Copy of Thomas Northrop's Director's level appeal decision.
- Copy of Request for Determination of Underground Regulation from Office of Administrative Law regarding the removal of pork products.
- Copy of letter dated February 6, 2003, from Office of Administrative Law to Thomas Northrop regarding Request for Determination concerning the removal of pork from the prison menu.
- Copy of California Department of Corrections Operations Manual, Section 54080.15, et seq.
- Copy of San Quentin food menu.
- Copy of order Directing Attorney General to File Informal Response to Petition.
- Copy of letter dated July 15, 2003, from Marin County Superior Court regarding Thomas Northrop Writ of Habeas Corpus.
- Copy of letter dated July 17, 2003, from Marin County Superior Court regarding Thomas Northrop informal reply to informal response.
- Copy of Marin County Superior Court Order Dismissing Petition for Writ of Habeas Corpus.
- Copy of Federal Reporter, U.S. Court of Appeals, Third Circuit, *Williams; Stallworth v. Morton, et al.*

Accommodation: None.

Response to Comment 13A is responded to under summaries and responses to oral comments, Speaker #4.

Commenter #14.

Comment 14A: Commenter states the regulations must include accommodations for the religious dietary requirements of Muslim inmates. Commenter supports this in the court order re *Mayweathers, et al., v. Terhune, et al.*, in which the order stipulates Halal meats to be served to Muslim inmates for two religious Muslim holidays and a Vegetarian meal option (specifically lack of meat or meat products in food items because it is not Halal meat and meat products). Commenter further states adding a requirement to provide a Halal diet to Muslim inmates would help alleviate current problems inmates experience, such as, lack of compliance by prison staff with the court order. Commenter finally raises the issue of expanding the California State Prison (CSP) Solano court order to all institutions by incorporating language in the regulations to include a Muslim Halal diet (i.e., Sections 3054(e), 3054.2, and 3054.3(b)(1)). Commenter goes on to demonstrate suggested changes to this view.

Accommodation: None.

Response to Comment 14A: In accordance with the court order found in *Mayweathers v. Terhune*, the Department complies with the stipulations of that court order including serving Halal meat for two religious Muslim holidays to Muslim inmates at the institution, CSP Solano. The Department has built in training for Chaplains and institution staff in order to offset noncompliance of any court orders, policy, and regulations (copy of

policy incorporated by reference). The regulations offer the regular pork-free heart healthy diet, plus the religious Vegetarian diet, including the omission of non-Halal meat and meat products. The Department is currently researching the feasibility and costs of expanding diets to accommodate Muslim inmates by incorporating some aspects of the Halal diet. The initial steps are researching the resources, availability, and costs of Halal foods, especially meat. Currently, the proposed incorporation of daily Halal meat diet is estimated at an additional \$9 million per year, a cost requiring a supplement to the Department's budget.

Comment 14B: Commenter states the regulations must remove the eligibility requirement for participation in the Religious Diet Program. Commenter relies upon the Religious Land Use and Institutionalized Persons Act of 2000, the U.S. Constitution, and *Williams v. Bitner* for this comment. The laws provide that an inmate simply show sincerity of belief in a particular religion. Commenter goes on to offer suggested changes to the regulations to accommodate this view. Finally, commenter states there are no criteria in the regulations demonstrating how a Chaplain would make the determination that inmates are eligible for a religious program/diet, thus giving no support for appeal to denials for participation.

Accommodation: None.

Response to Comment 14B: The RLUIPA and the *Williams* case do not preclude prison Chaplains from determining the sincerely held beliefs of inmates who request religious accommodations. Ninth Circuit case law, in *Resnick v. Adams* 348 F.3d 768, 769 (9th Cir. 2003) establishes that Chaplains may be allowed the opportunity to assess the beliefs of inmates as part of a regularized process within a prison system for inmates to apply for a religious meal plan. The Department bases its religious program/diet regulations on the premise that Chaplains are the best qualified to determine whether or not an inmate is sincere in a particular belief, and validate their engagement or lack of participation in a religious program qualifying them for a religious accommodation. The Department does not presume to be qualified for this task, yet must set boundaries for those inmates who claim allegiance to a faith by establishing a means to validate their claims. The criteria for determining a religious eligibility should be determined by the Chaplains who are subject matter experts or who can meet and confer with those religious scholars who are subject matter experts. The Department has built in training of Chaplains to help attain these goals and statewide consistency.

Comment 14C: Commenter states the regulations must ensure that adequate participation opportunities exist for all prisons. Commenter further states not all institutions have Jewish Chaplains to meet the requirements of the new regulations requiring the Jewish Chaplains involvement and oversight of the Jewish inmates.

Accommodation: None.

Response to Comment 14C: The Department is hiring Jewish Chaplains to accomplish the goals of the regulations which is outlined in the Department's budget for Fiscal Year 05/06 as phase one of the program's implementation.

Commenter #15.

Comment 15A: Commenter requests a special Halal meat diet be offered to Muslim inmates. Commenter states Muslim inmates far outnumber Jewish inmates. Commenter

further states that a Halal diet would be helpful to Muslim inmates and the Department should not waste the public's tax dollars on a small religious segment when there are other religious groups as well.

Accommodation: None.

Response to Comment 15A is responded to under summaries and responses to oral comments, Speaker #4.

Commenter #16.

Comment 16A: Commenter opposes the changes to the regulations because Vegetarian diets are not Islamic and that Muslim diets consist of Halal meats.

Accommodation: None.

Response to Comment 16A is responded to under summaries and responses to oral comments, Speaker #4.

Commenter #17.

Comment 17A: Commenter opposes the changes to the regulations because Muslim inmates are not being offered a choice of Halal diet.

Accommodation: None.

Response to Comment 17A is responded to under summaries and responses to oral comments, Speaker #4.

Commenter #18.

Comment 18A: Commenter certifies the official representative of the Islamic Sharia Council is Moulana Abdullah Nana who spoke at the hearing (see Speaker #4). Commenter states that Halal meat for Muslims is as important as the Kosher meat for Jews.

Accommodation: None.

Response to Comment 18A is responded to under summaries and responses to oral comments, Speaker #4.

Commenter #19.

Comment 19A: Commenter states concerns regarding the changes to the regulations because the Department is increasing the number of Jewish Chaplains, but there are already vacant positions. Commenter states Jewish Chaplain positions are difficult to fill in remote areas. Commenter further states repealing subsection 3054(b) leaves few options if Jewish Chaplains can't be found for some facilities and other Chaplains will have to accommodate the Jewish inmate's needs. Commenter further states the repeal of subsection 30549(a)(2) takes away the ability to meet the needs of new religions with difficult dietary needs. Commenter finally states changing the word in 3054(a) from "verify" to "determine" makes the language unclear and the language is unclear for other religious

groups and constraining (15-days) to determine the religious needs before issuing a religious diet.

Accommodation: None.

Response to Comment 19A is responded to under summaries and responses to oral comments, Speaker #1, Comment 1B.

Commenter #20.

Comment 20A: Commenter approves changes to the regulations. Commenter also states they would like the Department to give Halal meals to Muslim inmates and that the larger population is Muslim so it would be beneficial to more inmates.

Accommodation: None.

Response to Comment 20A is responded to under summaries and responses to oral comments, Speaker #4.

Commenter #21.

Comment 21A: Commenter states the regulation changes are dangerous, will invite unnecessary lawsuits, and gives preferences to one religious group. Commenter further states numerous Muslim inmates have ongoing and lengthy lawsuits to obtain a Halal diet that meets their religious dietary needs (*Mayweather v. Terhune*). Commenter also states the religious Vegetarian diet is unacceptable because Muslims are not Vegetarians for the most part; the regulations violate the First Amendment and Separations of Powers clause, as well as the RLUIPA.

Accommodation: None.

Response to Comment 21A is responded to under summaries and responses to oral comments, Speaker #4.

Comment 21B: Commenter states that removing existing subsection 3054(a)(2), that allows for those religious groups whose dietary needs cannot be met by the Department to contract for meals, singles out those groups and would be discriminatory. Commenter further states the regulations single out a group of inmates and tries to cater to an unidentified sub group called "Vegetarian."

Accommodation: None.

Response to Comment 21B is responded to under summaries and responses to oral comments, Speaker # 3.

Comment 21C: Commenter commends the Department for trying to start a religious diet program although its cause was litigation. Commenter states if the final regulations exclude the Muslim Halal diet, court documents will be amended to add CDCR and those responsible for the proposed regulation language in litigation before the Northern District Court.

Accommodation: None.

Response to Comment 21C: The Department appreciates commendations in its attempt to keep faith with the court and stay in line with its mission of public safety and inmate rehabilitation. The Department cannot stop anyone from litigating against its programs, policy, or regulations if they are dissatisfied with our remedies.

Commenter #22.

Comment 22A: Commenter states he is a Buddhist and vegan. Commenter states subsection 3051(a) should be amended to specifically include inmate food handlers. Also, the training should include sensitivity addressing religious practices and religious diets. Commenter further states a subsection or separate subsection should be added prohibiting discrimination, harassment, threats, use of force, etc., on any inmate participating.

Accommodation: None.

Response to Comment 22A is responded to under summaries and responses to oral comments, Speaker # 3.

Comment 22B: Commenter proposes to change subsection 3054(d) to add..."while accommodating the religious diet to the greatest extent possible." Commenter further states medical diets do not always agree with an individual's religious diet, which is protected under the constitution as mutually exclusive in that people have a right to exercise each and every right simultaneously.

Accommodation: None.

Response to Comment 22B: The Department's medical staff determines the necessary medical diet for inmates with illnesses/disabilities. Inmate medical care falls within the scope and responsibilities of the Division of Correctional Health Care Services and the Office of Health Care Policy, within the CDCR, which provides regulations and policy language to govern medical diets outside the scope of mainstream inmates.

Comment 22C: Commenter states that subsection 3054.1 does not clearly define what "Vegetarian" means and that a vegan diet refraining from eggs, dairy, and meat better serves a broader need of Vegetarian eaters. Commenter argues the practicability of alternating a Vegetarian protein for a meat protein from the same day's scheduled meal as meeting the nutritional needs of a Vegetarian. (Commenter provides many samples of his diet to show this.)

Accommodation: None.

Response to Comment 22C: The Department has determined a Vegetarian meal plan is nutritionally adequate and accommodates a wider range of religious beliefs and personal choice than a vegan diet containing no meat, dairy, or egg products.

Comment 22D: Commenter states the regulations should add a subsection stating the Department's pro-active policy regarding religious diet issues, such as a 3 business day timeline, to respond to inmate correspondence, issues, etc., and that vitamins be added to the daily diet. Commenter further states the religious diets should offer Vegetarians more diversity.

Accommodation: None.

Response to Comment 22D: The Department has built-in language in the regulations and policy with timelines to ensure timely responses to requests for religious diets, and monitoring and reporting for accountability. The Department's dietary plan provides foods that are nutritionally adequate and incorporate a degree of variety. Multi-vitamins and mineral supplements are approved as property for inmates and may be purchased by them in the canteen or sent to them in approved quarterly packages.

Comment 22E: Commenter speaks to other issues such as poor food handling service that creates problems with the Vegetarian diet when food handlers mix vegetables with gravy known to contain meat products. Other issues cited are: the length of time given to eat because special diets are not consolidated with those inmates participating, and ensuring adequate nutritional value from the Vegetarian meals. Commenter states subsection 3054.3(b)(7) is not applicable in that food service staff and handlers are incapable of providing an adequate, nutritionally balanced, Vegetarian diet.

Accommodation: None.

Response to Comment 22E is responded to under summaries and responses to oral comments, Speaker # 3.

Comment 22F: Commenter states subsections 3054.2(a) and 3054.2(b) do not address the problems institutions may face by providing equal treatment for all faiths and that some institutions are not well equipped to meet these demands.

Accommodation: None.

Response to Comment 22F: This comment is responded to under summaries and responses to oral comments, Speaker #1, Response 1A, and the responses to oral comments, Speaker #3, Response 3A.

Comment 22G: Commenter states subsection 3054.3(a) requires Chaplains to supply a religious diet to inmates, who are approved, within 15 calendar days and that it could really be 3 to 4 weeks because some special religions take time to research and verify. Commenter proposes a temporary religious diet card which expires after 30 days.

Accommodation: None.

Response to Comment 22G: This is responded to in Response to Comment 14B.

15-DAY RENOTICE:

Public Comment period was March 2, 2006 through March 22, 2006

Commenter #1

Comment 1A: Commenter contends he generally approves of the changes but there are a couple of sentences that bring concern. Commenter says that 3050(a)(2) includes an open-ended clause in the additional text that needs clarification. Commenter specifically references "and institution emergencies," and says it is quite likely the probability of being unduly prejudicial against the legitimately religious inmate and the First Amendment "free exercise" clause, could easily be subverted for any number of reasons, but the most likely of which is a lockdown.

Accommodation: None.

Response to Comment 1A: The Department contends that the above comment is not directly related to the specific changes made to the originally proposed text set forth in the 15-Day Renotice, and will not be considered. Clearly stated on the 15-Day Renotice cover letter, “only those comments relating directly to the enclosed post-hearing changes that are indicated by **bold face type** with **double underlining** and **double strikethrough** will be considered.”

Comment 1B: Commenter states that 3052 involves Health and Safety Standards. Commenter supports being served food that is handled by clean, healthy people, but reality is that there are far too many people that are not given adequate training, or simply have a vindictive nature and have no interest in the health or well-being of others. Commenter further contends that custody and staff do not use hair nets and not all inmates are “hygienic”.

Accommodation: None.

Response to Comment 1B: See 15-Day Renotice, Response to Comment 1A.

Comment 1C: Commenter states that 3053 has significant questionability. When minority religions are not being adequately represented by institutional clergy, what will be the proper method to become the “designee”? Would the minority religion’s Religious Advisory Committee representative be empowered to act in this capacity, or would it require another disinterested party? Commenter contends that the First Amendment is not an absolute, but it was logged as the First Amendment due to the importance of these rights.

Accommodation: None.

Response to Comment 1C: See 15-Day Renotice, Response to Comment 1A. The Department also contends that the amendments to the originally proposed text in Section 3053 were for correction purposes only. In subsection 3053(a), the current words “may” and “no” were inadvertently left out of the original text, but in the 15-Day Renotice, added back in and then deleted. In addition, the words “shall not” were not properly underlined as new language in the original text, therefore, both words were double underlined as new language. Changes to subsection 3053(b) provide correct language that was inadvertently left off the original text.

Comment 1D: Commenter states that 3054(b) as amended is a good step and a possible sign that the Department is starting to understand the concept of “rehabilitation”.

Accommodation: None.

Response to Comment 1D: The only additional change to this subsection in the 15-Day Renotice was to take the existing subsection 3054(b) deleted text from the last page, which in the original text was incorrectly placed, and move it to the correct location under section 3054.

Comment 1E: Commenter states 3054(d) is confusing and appears to be a rhetorical statement. Commenter contends that he personally knows of an individual who is being denied a vegetarian diet by medical, because they say that it is an issue that needs to be addressed through Chaplaincy which in turn deny him, because he is Catholic. He further states that when an inmate tries to address his own medical needs (high cholesterol), but is denied assistance from either Medical or Chaplaincy, where is he to turn? The Courts? Civil and/or Criminal? To keep “passing the buck” is not only improper, it is immoral.

Accommodation: None.

Response to Comment 1E: See 15-Day Renotice, Response to Comment 1A.

Comment 1F: Commenter states that 3054(e)(1) is not adequately explained. Some religious groups are actually vegan, which precludes having fish or eggs, and in some cases, even cheese and milk. Commenter also states that he does not have a problem with eggs, cheese, or milk, and does not eat fish. This eliminates the protein source from at least two meals, but usually more per week. In many cases, the inmate is indigent and can't get supplementary proteins to enhance his diet. In addition, it may be more feasible to provide more peanut butter in lunches and more legumes in the hot meals in order to accommodate those that require a vegan diet.

Accommodation: None.

Response to Comment 1F: See 15-Day Renotice, Response to Comment 1A.

Comment 1G: Commenter states that 3054.3 is mandatory, and that he personally fought for 2 years to receive a "no-meat" card. He also states that the pathetic response to his requests necessitated 3 separate State habeas proceedings and a Federal 42 U.S.C. Section 1983 complaint. It has cost the taxpayers an estimated \$50,000 – \$100,000 so far for what should have been dealt with rapidly in the institution. At best, this was a case of prejudice and at worst, a hate-crime. Commenter feels this is a deliberate indifference to the rights of others and that there needs to be more accountability in the program.

Accommodation: None.

Response to Comment 1G: Although the above comment/objection does regard an aspect or aspects of the subject proposed regulatory action or actions and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation or accommodation to the comment.

Commenter #2

Comment 2A: Commenter states that he wishes to offer additional comments on the proposed changes that are in addition to the comments that he originally submitted in his letter dated November 17, 2005, and any relevant comments in that letter are incorporated by reference. Commenter also states that the additional amendments do not give any indication of incorporating any of the suggestions from the November 17, 2005 letter.

Accommodation: None.

Response to Comment 2A: The Department contends that the Commenter's letter was postmarked within the original comment period and was accepted. His comments were summarized and responded to under "Summaries and Responses to Written Comments," Commenter #22.

Comment 2B: Commenter states that existing subsection 3054(b) is to be deleted and new section 3054.2 is adopted, and when considered, constitute overt discrimination on a person's religious beliefs. This is contrary to the U.S. Constitution, the California Constitution, and numerous state and federal statutory and regulatory provisions of law.

Commenter states he addressed this issue in his previous letter that was submitted in the original comment period.

Accommodation: None.

Response to Comment 2B: See 15-Day Renotice, Response to Comment 2A.

Comment 2C: Commenter states that experience has shown the food service staff at his institution are not capable, and never will be capable of providing a nutritionally balanced and adequate vegan and/or vegetarian diet. Due to his Buddhist beliefs, he has been a strict vegan for over 30 years, and due to knowledge deficiencies, is repeatedly served inappropriate items for a vegan diet. Commenter also states that staff members do not know the definition of vegan and the concept is beyond their capability to understand. Due to the disruption accommodation of his diet, he was singled out for harassment, intimidation, name calling, oppression, threats, and assault by correctional officers. He also has been given 4 unfounded “write-ups” for eating a cinnamon roll given to him by his cellmate, and for taking too long to eat his food. It makes more sense to have vegans housed together where proper meals can be prepared for the whole group by staff with experience in preparing such meals. Also, people of any faith should be allowed to transfer to another institution which can provide for their dietary needs.

Accommodation: None.

Response to Comment 2C: See 15-Day Renotice, Response to Comment 1A.